

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 7, 2008

STATE OF TENNESSEE v. ANTHONY D. PEARSON

Direct Appeal from the Criminal Court for Montgomery County
No. 40500314 John H. Gasaway, III, Judge

No. M2007-02257-CCA-R3-CD - Filed April 6, 2009

The state appeals the trial court's grant of a motion to suppress the evidence seized as a result of a warrantless arrest and subsequent search of the defendant, Anthony D. Pearson. After a thorough review of the record, we conclude that the police officers had probable cause to arrest and search the defendant. Accordingly, we reverse the judgment of the trial court granting the motion to suppress and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

J.C. McLIN, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Collier W. Goodlett, District Public Defender, Clarksville, Tennessee, for the appellee, Anthony Dewayne Pearson.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; John Wesley Carney, Jr., District Attorney General; and John Finklea, Assistant District Attorney General, for the appellant, State of Tennessee.

OPINION

BACKGROUND

On February 8, 2005, a Montgomery County Grand Jury indicted the defendant, Anthony D. Pearson, for conspiracy to sell or deliver more than .5grams of cocaine, possession of more than .5 grams of cocaine with the intent to sell, and possession of more than .5 grams of cocaine with the intent to deliver. The defendant filed a pretrial motion to suppress the evidence seized from him on April 23, 2004. A suppression hearing was held on August 27, 2007. At the hearing the state presented the following evidence. Police Officer Frederick McClintock of the Clarksville Police Department Major Crimes Unit testified that on April 23, 2004, he and Officer Lon Chaney were

performing video surveillance and monitoring an active wiretap on a house belonging to Salwillel Fields, a suspected drug dealer, at 613 Hamilton Drive. While conducting surveillance, Officer McClintock observed a Chevrolet Caprice park in front of the house. A black male later determined to be the defendant exited the Caprice and approached Mr. Fields who was standing in front of the garage. The defendant handed Mr. Fields what appeared to be money and Mr. Fields handed the defendant a clear plastic bag, which the defendant placed in his right front pocket. The defendant hung out for a while then left. At this time, Officer McClintock reported over the radio that he witnessed what he believed to be a drug transaction. Officer McClintock then provided a description of the defendant and his vehicle.

Police Officer Joe Papastathis testified that, after hearing the report, he began “assisting other units in looking for [the] vehicle.” Officer Papastathis clocked the defendant’s vehicle on radar going 36 miles per hour in a 30 miles per hour zone. Officer Papastathis then radioed this information to other officers he knew were looking for the vehicle. Officer Lon Chaney testified that he stopped the defendant’s vehicle at 812 College Street and advised the defendant that another officer had observed the defendant speeding on Greenwood Avenue. Officer Chaney recalled that he stopped the defendant around 4:00 p.m. Officer Chaney asked the defendant for his driver’s license and asked him to step out of the vehicle. A couple of minutes after the defendant was stopped, Officer Brett Norfleet arrived with a drug-sniffing dog. Officer Chaney asked the defendant’s permission to search his vehicle for drugs or weapons, and the defendant granted this request. Officer Chaney also requested the defendant to “turn out [his] pockets,” and the defendant complied. The defendant, however, declined consent to an extensive search of his person. Officer Chaney stated that no drugs were found in the defendant’s car or on the defendant’s person at the scene of the traffic stop. However, the defendant was arrested based on Officer McClintock’s report that he observed the defendant engaged in a drug transaction. Officer Chaney estimated that the defendant was arrested and transported to the Major Crimes Unit of the police department around 4:45 p.m.

Officer Brett Norfleet testified that he conducted the search of the defendant’s vehicle with the aid of a drug-sniffing dog. Officer Norfleet noted that, while the dog did not alert to the presence of drugs, the dog showed a high level of interest around the driver’s side, floorboard area. Officer Norfleet acknowledged, however, that given the sensitivity of the dog’s nose, he could not identify when drugs might have been present in the defendant’s vehicle. Officer Norfleet suggested that the defendant was arrested after the stop because the defendant was involved in a drug transaction.

Police Officer Donnie Robbins testified that he and Officer Hamilton met with the defendant in the interview room of the Major Crimes Unit. At this time, the defendant was under arrest. Officer Robbins informed the defendant that he intended to search him. The defendant responded by exclaiming “f**k it.” The defendant then proceeded to retrieve a plastic bag containing crack cocaine from his sock. Officer Robbins asserted that he believed he had probable cause to search the defendant in custody based on Officer McClintock’s personal observations of the drug transaction, and the behavior of the drug-sniffing dog. Officer Robbins noted that he was in touch with the other officers during the entire proceeding.

Based on the foregoing evidence, the trial court granted the defendant's motion to suppress the cocaine found on the defendant's person. In granting the motion, the court stated the following:

Mr. Fields was being [watched] by the major crimes [unit]. . . . And [the defendant] showed up at Mr. Fields' house; he . . . gave Mr. Fields money and Mr. Fields gave him drugs. He hung around for a while and later left.

Well, the officers were watching all this but they didn't want to move in on [the defendant] and blow their cover. But [the defendant] sort of gave them a chance to move on him later, because he . . . broke the speed limit . . . And so he was stopped by an officer.

What the officers did was they transferred the information down the line; the drug officers told the patrol officer[s] The [patrol] officers knew the real reason that they wanted to stop [the defendant] was because earlier they had seen him buy drugs from Mr. Fields. They felt certain it was in his car, and so when he violated the speed limit here they came. What they told him when they stopped him was you're being stopped for speeding. They went through the routine of [asking for] license, registration, proof of insurance . . . but . . . being a detention for speeding . . . they should have cited him and sent him on his way[.] [However,] they detained him so that the drug dog could come and move around the car because they knew that the drug dog was going to give them probable cause to go [search] the car. . . .

He was arrested for speeding and apprehended, taken in for speeding, and when they searched him incident - - you know, as a consequence of him being arrested they found the drugs in his sock.

But the issue turns on whether or not the [drugs] should be suppressed. Had the officers operated . . . based upon what they believed to be a sale of drugs, if they had acted on that basis and recited that as their probable cause to make the stop I think their position would be much stronger; but they sort of sealed their own fate when they wouldn't give up that information and acted entirely on the proposition that [the defendant] was a speeder, and as a speeder they . . . cuffed him and put him in a patrol car and brought him downtown. . . . [T]hey went too far when they arrested him for speeding. They hung their hat on that argument, and I think when they did, they sealed their fate, and the motion must be granted.

STANDARD OF REVIEW

This case involves a review of the trial court's findings of fact and law in granting the motion to suppress. "When evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, the court on appeal must uphold the trial court's findings of fact unless the evidence

preponderates otherwise.” *State v. Williams*, 185 S.W.3d 311, 314 (Tenn. 2006). “Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact.” *State v. Lawrence*, 154 S.W.3d 71, 75 (Tenn. 2005) (quoting *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996)). However, appellate review of a trial court’s conclusions of law and application of law to facts on a motion to suppress evidence is a de novo review. See *State v. Nicholson*, 188 S.W.3d 649, 656 (Tenn. 2006); *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001).

ANALYSIS

On appeal, the state argues that it was error for the trial court to grant the defendant’s motion to suppress because the officers had probable cause to arrest and search the defendant after observing him engage in a hand-to-hand drug transaction. The state submits that no “evidence presented at the hearing supports a conclusion that the officers acted solely upon the defendant’s speeding offense, and the record overwhelmingly demonstrates that they arrested the defendant because they had probable cause to believe he committed a felony.” In the alternative, the state argues that the arrest and search incident to the arrest was valid because the “cite and release” statute provided an exception allowing the defendant to be taken into custody for a traffic violation. See Tenn. Code Ann. § 40-7-118. In rebuttal, the defendant maintains that the trial court ruled correctly. The defendant submits that the court correctly observed that the police justified the stop, arrest, and search of the defendant on the basis that the defendant committed a traffic violation. As such, the arrest and search incident to the arrest was properly found by the court to be unreasonable. The defendant also asserts that Officer McClintock’s belief that he saw the defendant engaged in a drug transaction was insufficient justification to arrest and search the defendant. The defendant submits that Officer McClintock could not know “if this was the sale of a felony amount of drugs, the sale of a misdemeanor amount of drugs, the sale of legitimate produce which appeared to be drugs, or the sale of counterfeit drugs.”

From the foregoing record, we glean that the trial court concluded that the police officer’s justification for the eventual search of the defendant was based solely upon their observation that the defendant committed a traffic violation to the exclusion of their justification that drugs were discovered on the defendant’s person after a lawful arrest. While we recognize that the officers were “hedging their bets” in an effort to insulate their actions from being scrutinized as unreasonable, it is clear from the record that the officers presented an alternative justification to explain the arrest of the defendant and subsequent discovery of drugs. In this regard, we disagree with the trial court’s application of law to the facts of the case. Of significance, “the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer’s action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.” *Scott v. United States*, 436 U.S. 128, 138 (1978). In other words, subjective intent alone does not make otherwise lawful conduct illegal or unconstitutional. See *Whren v. United States*, 517 U.S. 806, 813 (1996). Accordingly, our inquiry centers around the factual circumstances of defendant’s arrest as the legality of the search in this case depends upon the legality of the arrest. *United States v. Robinson*, 414 U.S. 218, 235 (1973).

Both the Fourth Amendment to the United States Constitution and Article I, section 7 of the Tennessee Constitution protect individuals from unreasonable searches and seizures. These constitutional provisions are designed “to prevent arbitrary and oppressive interference with the privacy and personal security of individuals.” *State v. Daniel*, 12 S.W.3d 420, 424 (Tenn. 2000) (quoting *INS v. Delgado*, 466 U.S. 210, 216 (1984)). Therefore, “[u]nder both the federal and state constitutions, a warrantless seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement.” *Nicholson*, 188 S.W.3d at 656; *see also State v. Binette*, 33 S.W.3d 215, 218 (Tenn. 2000).

One such exception to the warrant requirement is a search incident to a lawful arrest. *Robinson*, 414 U.S. at 235. In order to justify a search incident to arrest, the searching officer must have probable cause to arrest the individual in question. *New York v. Belton*, 453 U.S. 454, 457 (1981). Probable cause to arrest exists if the officer has “facts and circumstances within [his] knowledge and of which [he] had reasonably trustworthy information . . . sufficient to warrant a prudent man in believing that the [individual in question] had committed or was committing an offense.” *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *see also State v. Bridges*, 963 S.W.2d 487, 491 (Tenn. 1997). Once the individual has been lawfully arrested based on probable cause, the police may conduct a search incident to that arrest. *Robinson*, 414 U.S. at 235 (“A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.”). However, if the individual is unlawfully placed under custodial arrest, a subsequent search is also unlawful and evidence seized as a result of the unlawful search is suppressed and not admissible in the prosecution’s case in chief. *State v. Walker*, 12 S.W.3d 460, 467 (Tenn. 2000) (citing *Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963)). In determining whether probable cause exists, courts must consider the totality of the circumstances including the officer’s testimony and factual knowledge based upon prior law enforcement experience. *Bridges*, 963 S.W.2d at 494. However, probable cause must be more than a mere suspicion. *Lawrence*, 154 S.W.3d at 76 (citing *State v. Melson*, 638 S.W.2d 342, 350 (Tenn. 1982)).

Having delineated the guiding principles, we now consider whether or not there was probable cause to effectuate the defendant’s arrest. To reiterate, justification for a warrantless arrest does not require a showing that the criminal offense was actually committed, only that the officer had a reasonable ground to believe it was committed. *See State v. Henning*, 975 S.W.2d 290, 294 (Tenn. 1998) (defining probable cause as “a reasonable ground for suspicion, supported by circumstances indicative of an illegal act.”). The record reflects that while conducting surveillance of a suspected drug dealer, Officer McClintock observed the defendant give money to the suspected drug dealer in exchange for a small plastic bag. Given his law enforcement experience, Officer McClintock interpreted the exchange as an illegal drug transaction and relayed his observations to other police officers. Generally, information given by one officer to another is reasonably reliable information to provide probable cause. *See, e.g., State v. Brown*, 638 S.W.2d 436, 438 (Tenn. Crim. App. 1982). Based on Officer McClintock’s first-hand observations, the defendant was ultimately arrested and

told by police while in custody that he was going to be searched. In our view, Officer McClintock's observations satisfied the probable cause standard for a warrantless arrest. Accordingly, the eventual search after the defendant's arrest was constitutionally sound as a search incident to a lawful arrest.

CONCLUSION

After consideration of the foregoing and the record as a whole, we conclude that the police officers had probable cause to arrest and search the defendant. As such, we decline to address the state's alternative argument involving the "cite and release" statute and its exceptions. The trial court's grant of the defendant's motion to suppress is reversed and the case is remanded for further proceedings.

J.C. McLIN, JUDGE